

CLEARY GOTTLIEB STEEN & HAMILTON LLP

AMERICAS
NEW YORK
SAN FRANCISCO
SÃO PAULO
SILICON VALLEY
WASHINGTON, D.C.

ASIA
BEIJING
HONG KONG
SEOUL

1841 Page Mill Road, Suite 250
Palo Alto, CA 94304-1254
T: +1 650 815 4100

650 California Street, Suite 2000
San Francisco, CA 94108-2702
T: +1 415 796 4400

D: +1 (650) 815-4131
adunning@cgsh.com

EUROPE & MIDDLE EAST
ABU DHABI
BRUSSELS
COLOGNE
FRANKFURT
LONDON
MILAN
PARIS
ROME

December 5, 2023

VIA ECF

The Honorable Lorna G. Schofield
United States District Court
for the Southern District of New York
40 Foley Square, Room 1106
New York, NY 10007

Re: *Huckabee et al. v. Meta Platforms, Inc. et al.*, No. 1:23 Civ. 09152 (LGS)

Dear Judge Schofield:

Pursuant to Rule I.B. of this Court’s Individual Rules of Practice, the parties write jointly to inform the Court of certain defendants’ intent to challenge venue and/or jurisdiction in this Court and to present the Court with certain parties’ request that the Court enter a phased briefing schedule and adjourn the initial Case Management Conference (“CMC”), currently scheduled for December 13, 2023, pending resolution of briefing directed solely to jurisdictional and venue challenges. On November 21, 2023, the parties requested an extension of time to January 26, 2024 for all defendants to respond to the Complaint, which the Court granted. ECF No. 36.

Defendant Meta Platforms, Inc. (“Meta”) intends to file, and defendant Microsoft Corporation (“Microsoft”) intends to join, a motion to sever and transfer all claims against them to the Northern District of California, on the ground, among others, that overlapping putative class action lawsuits involving the same claims and subject matter of this action are already pending against Meta in that Court before the honorable District Judge Vince Chhabria, captioned *Kadrey et al. v. Meta Platforms, Inc.*, No. 3:23 Civ. 3417 (VC) (filed July 2023), and *Chabon et al. v. Meta Platforms, Inc.*, No. 23 Civ. 4663 (VC) (filed September 2023), warranting severance and transfer under the First Filed Rule and 28 U.S.C. § 1404. Defendant EleutherAI Institute (“EleutherAI”) is also contemplating a challenge to proceeding in this Court, on grounds of improper venue and/or lack of personal jurisdiction. Plaintiffs dispute that venue or jurisdiction is lacking in this Court as to these defendants, and defendants Bloomberg L.P. and Bloomberg Finance, L.P. (together, “Bloomberg Defendants”) do not currently intend to oppose such anticipated motions.

Hon. Lorna G. Schofield, p. 2

Although the Bloomberg Defendants do not oppose severance and transfer of the claims against Meta and Microsoft and do not anticipate any opposition to EleutherAI's contemplated motion, the Bloomberg Defendants wish to be clear with the Court that they oppose transfer of Plaintiffs' claims against the Bloomberg Defendants. The Bloomberg Defendants, BloombergGPT, and the claims against the Bloomberg Defendants are unrelated to Meta and the claims separately presented against Meta in the pending *Kadrey* and *Chabon* litigations.

In light of the forthcoming motion practice, and in the interests of judicial efficiency and economy, the parties have met and conferred and (with the exception of Bloomberg Defendants) agree, subject to the approval of the Court, that briefing should be staged such that any motions directed to venue or jurisdiction are filed and resolved first, before any defendant is required to file Rule 12(b)(6) motions directed to other asserted pleading defects, and that the initial CMC currently set for December 13, 2023 should be adjourned until after the hearing on the venue/jurisdiction motions, consistent with this Court's practice in other cases. *See Teva Pharmaceuticals USA, Inc. v. Synthon Pharmaceuticals, Inc.*, No. 1:17 Civ. 345 (LGS) (S.D.N.Y. Feb. 8, 2017), ECF No. 31; *Dentsply Int'l, Inc. v. Dental Brands for Less LLC*, No. 15 Civ. 8775 (LGS) (GWG) (S.D.N.Y. Jan. 22, 2016), ECF No. 18. With the exception of the Bloomberg Defendants, all parties agree it is premature to discuss a case schedule or proceed with the CMC, discovery or other pretrial planning while venue and jurisdictional challenges remain to be decided.

Accordingly, Plaintiffs and defendants Meta, Microsoft, and EleutherAI now respectfully request entry of an order: (1) adjourning the CMC until after the hearing on the anticipated venue motion and vacating the attendant December 6, 2023 deadline to submit a joint CMC statement (ECF No. 36); (2) staying any obligation of defendants to answer or otherwise file motions to dismiss under Rule 12(b)(6) directed to pleading defects other than venue or jurisdiction until after any venue/jurisdictional challenges are resolved; and (3) setting the following briefing schedule on motions directed solely to venue/jurisdiction:

- January 26, 2024: Opening Papers
- February 20, 2024: Opposition Papers
- March 1, 2024: Reply Papers

The Bloomberg Defendants state that they are prepared to appear for the initial CMC as currently scheduled on December 13, 2023, and to file certain case management related papers on December 6, 2023. Bloomberg Defendants recommend that the Court proceed with the CMC to hear the parties' positions regarding preliminary matters and to establish an appropriate schedule for their resolution. Although Plaintiffs join defendants Meta, Microsoft, and EleutherAI in the request to adjourn the CMC and vacate the December 6 deadline, Plaintiffs are also prepared to comply with the Court's orders and appear for the December 13, 2023 CMC as scheduled. Finally, although Bloomberg Defendants defer to the Court's preferences regarding the orderly progression of this matter, they are prepared to present their responsive motion to dismiss the Complaint on January 26, 2024, pursuant to the parties' earlier agreement and the Court's Order, and Plaintiffs will be prepared to respond accordingly.

[signature on next page]

Hon. Lorna G. Schofield, p. 3

Respectfully submitted,

/s/ *Angela L. Dunning*

Angela L. Dunning
Cleary Gottlieb Steen & Hamilton LLP
Counsel for Meta Platforms, Inc.

cc: Counsel of Record (via ECF)